NO. 773

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970

WALTER L. LARSEN, JR.,

Petitioner,

vs

AIR CALIFORNIA,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

ARGUMENT

I

Introduction

The Petition for Writ of Certiorari to the Ninth Circuit Court of Appeals presents the question of whether the United States is required, at its own cost, to provide Petitioner with

a transcript of the trial proceeding in the case of *Walter L. Larsen, Jr. v. Air California*, Civil Action No. 69-944-AAH (C.D. Cal. 1970).

By Order dated May 22, 1970, the trial court denied Petitioner's "Motion For Leave To Appeal As A Veteran And For Transcript," certifying that Petitioner's appeal was frivolous and not taken in good faith. In so ruling, the court rejected Petitioner's contention that Rule 54(1) of the Rules of this Honorable Court requires the United States to provide a free trial transcript to persons seeking review of decisions based upon the Selective Service Act of 1968.

On June 17, 1970, Petitioner filed his Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the judgment below. Thereafter, Petitioner applied to the Circuit Court of Appeals for an Order requiring preparation of the trial transcript necessary to the appeal at the expense of the United States Government. Petitioner's application was denied by Order dated August 31, 1970. Petitioner has filed no brief in support of his appeal, and no judgment has been given upon that appeal.

II

The Petition Does Not Present A Question Of Imperative Public Importance

The Rules of this Honorable Court provide that where a writ of certiorari is sought prior to judgment being given in the court of appeals, such writ will be granted only upon a showing that the case is of such imperative public impor-

tance as to justify the deviation from normal appellate procedures. Rule 20 of the Rules of the United States Supreme Court.

It is respectfully submitted that neither the contention of Petitioner respecting Rule 54 nor the alleged error or abuse of discretion by the United States Attorney's office in refusing to represent Petitioner present questions within the purview of Rule 20.

III

Petitioner's Contentions Are Without Merit

Petitioner seeks the preparation of a transcript at government expense as a veteran asserting rights under 50 U.S.C. App. §459(d). That section does not provide for the preparation of a transcript at government expense. Neither does Rule 54(1) of the Rules of this Court, relating to review sought by a veteran.

By contrast, however, both Congress and this Court have provided for assistance in regard to the cost of a trial transcript where review is sought by a petitioner appearing *in forma pauperis*. 28 U.S.C. §1915 and Rule 53 of this Court. The conclusion that both Congress and this Court intended those distinctions between a veteran seeking review and a pauper seeking review is inescapable. Inasmuch as Petitioner has not qualified to proceed *in forma pauperis*, he is not entitled to have the transcript prepared at government expense.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

R. WICKS STEPHENS II

Counsel for Respondent

Of Counsel:
Gates, Morris, Merrell
& Stephens

State of California)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 322 Main Street, Huntington Beach, California 92648, that on OCTOBER 23, 1970, I served the within BRIEF FOR RESPONDENT IN OPPOSITION - on Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit (No. 773, October Term 1970) on the following named parties by depositing the designated copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

WALTER LARSEN, JR.
P. O. BOX 6212
SEATTLE, WASHINGTON 98188 [3 copies]

SOLICITOR GENERAL OF THE UNITED STATES
WASHINGTON, D. C. 20543 [3 copies]

UNITED STATES ATTORNEY
FOR THE CENTRAL DISTRICT OF CALIF.
12TH FLOOR, U. S. COURTHOUSE
LOS ANGELES, CALIFORNIA 90012 [1 copy]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on OCTOBER 23, 1970, at Huntington Beach, California.

D. A. Standefer